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First Named Inventor : Warren
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Docket No. : U000-P02005US
Customer No. : 33356

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

The following Appeal Brief is submitted pursuant to the Notice of Appeal filed August 4, 2003. The following Appeal Brief is submitted pursuant to 35 C.F.R. § 1.192 for consideration by the Board of Appeals and Interferences.

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I. REAL PARTY IN INTEREST

The real party in interest is NetZero, Inc., a wholly owned subsidiary of United Online, Inc.

II. RELATED APPEALS AND INTERFERENCES

There are no Appeals or Interferences which will affect or be affected by the outcome of this Appeal.

III. STATUS OF THE CLAIMS

Claims 1-42 were rejected in the Final Office Action mailed 1 April 2003. An amendment dated 29 July 2003 was submitted, and the amended claims were rejected in paper 18 mailed 20 August 2003.

IV. STATUS OF THE AMENDMENTS

An amendment dated 29 July 2003 was entered via paper 18 mailed 20 August 2003.

V. SUMMARY OF THE INVENTION

An Internet access client user interface (UI) is provided. A template defines the basic layout of the user interface, and is typically stored at the local device. The template has various slots designated for receiving program components, which are made up of program objects and corresponding program resources. More than one template may be provided so that more than one basic UI may be utilized. (p. 13, line 24 – p. 4, line 16)

Program objects are typically represented visually by graphics images such as buttons, menus, images, bars, windows, and other icons, and each object may have characteristics associated therewith. (p. 14, lines 17-18) The characteristics may include size, shape, color, associated text (including font and font size), animation settings, etc. (p. 14, line 26 - p. 15, line 6) Program objects may be dependent on other program objects, or they may be independent from other program objects. Program resources are functions, applications, programs, scripts,

commands, or other sequences of events which occur in response to activation of a program object. Activation of a program object may itself result in presentation, deletion, or modification of a program object. (p. 16, line 6 – p. 17, line 17)

Each time the Internet access client on the local device establishes a session with the server, the server sends the program objects and program resources to the Internet access client on the local device with rules assigning them to appropriate slots within the template. (p. 18, lines 16-25) The server may also send the template, but typically the template is not sent except for in connection with a major user interface upgrade. By sending the template only in limited situations, frequent transfer of a large portion of the user interface data to the local device is avoided.

Both the program objects and the corresponding program resources are selected by the server based in part upon profile data associated with the local device or with individual users of the local device. Some profile data is typically supplied by the Internet access client user, and may include user preferences, demographics, and other personal data. Other profile data is derived from statistics gathered by the Internet access client application regarding the user's use of the Internet access client application. The profile data can be updated at the beginning of each session, or during, or at the end of the session. (p. 21, lines 4-10) By selecting the program objects and resources based in part upon the profile data which the Internet access client application can supply each time an Internet session is established, the program objects and resources may be customized for each session of each independent local device connecting to the server. (p. 20, lines 8-20)

VI. ISSUES PRESENTED

The following issue is presented by this Appeal:

Are Claims 1-42 unpatentable under 35 U.S.C. § 103(a) by Sutcliffe (U.S. Patent No. 6,253,216) in view of Brown ((U.S. Patent No. 6,026,368)?

VII. GROUPING OF THE CLAIMS

We submit that the claims stand and fall together. Accordingly, the currently pending claims, claims 1-42 are to be considered as a single group.

VIII. ARGUMENT

A. Overview of Cited Art

1. Brown

Brown teaches a method for targeting advertisements and information to online users. Brown teaches a priority queue builder and manager for accumulating and sending advertisements and information to users. An accounting module is also taught to maintain billing information. (Col. 3, line 28 – col. 4, line 51)

2. Overview of Sutcliffe

Sutcliffe teaches a method and apparatus for an Internet user to submit a personal page to a personal ad website. (Abstract) Part of the system of Sutcliffe involves a user of a personal computer searching a personal ad database 96 maintained on a personals on-line network website via the Internet. (Sutcliffe, col. 7, lines 9-30). Sutcliffe also describes how a user may input data including photos to place a personal ad on a personals on-line network website via the Internet by use of templates located on the website. (Sutcliffe, col. 7, lines 9-30; col. 8, line 34- col. 9, line 55).

B. Rejection of Claims 1-42 as Unpatentable over Sutcliffe in view of Brown

The Examiner asserts that all claims are unpatentable over the combination of Sutcliffe and Brown. We strongly disagree.

Claim 1 recites “a method of creating a customized Internet access client user interface comprising:

selecting a first program object from a first set of available program objects based in part upon profile data associated with a local device;

selecting a first program resource from a first set of available program resources based in part upon the profile data;

sending the first program object to an Internet access client at the local device;

sending the first program resource to the Internet access client at the local device;

sending a first rule to the Internet access client at the local device to associate the first program object with the first program resource to form a first program component; and

sending a second rule to the Internet access client at the local device to assign the first program component to a first slot associated with a template for an Internet access client user interface.” (emphasis added)

It is well known that an applicant may be its own lexicographer¹, and that the Examiner is required to interpret the claims in view of the specification. The definition of an Internet access client is explicitly recited on p. 11, lines 11-17 of the specification. The definitions of and the distinct differences between an Internet client application and a browser application are set forth in the specification and used in the claims. (specification, p. 11, lines 9-17) Limitations of the functionality of the Internet client application are further refined in view of the definition of a browser application. (specification, p. 11, lines 9-11). An example browser application is recited as Microsoft Internet Explorer or Netscape Navigator. (p. 11, lines 21-22). Although the limitations of the specification are not to be read into the claims, when a term is defined in the

¹ An Examiner must rely on the applicant's disclosure to properly determine the meaning of terms used in the claims. *Markman v. Westview Instruments*, 52 F.3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir.) (en banc), *aff'd*, U.S., 116 S. Ct. 1384 (1996). Where an explicit definition is provided for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999).

specification, its definition should be used to evaluate and interpret the use of the term in the claims. The specification states that "The client application typically also sets up and provides access to the online service" (p. 11, lines 16-17).

We assert that the claims as amended are patentable over the combination of Sutcliffe and Brown. A key difference between what the Examiner asserts and what is claimed is that the Examiner is referring to a server sending instructions and scripts to an **Internet browser**, whereas the claim recites an **Internet access client**. The difference is described in the patent application as the difference between a "browser application" and a "client application." (p. 11, lines 5-17 of the specification) as discussed above.

In view of this distinction, neither Sutcliffe nor Brown teaches nor suggests any of the features of the Internet access client and the customized Internet access client user interface recited in independent claims 1, 11, 21, 31 and 41.

The Examiner asserts that Sutcliffe teaches "selecting a first program object from a first set of available program objects based in part upon profile data associated with a local device," citing col. 8, lines 18-22. However, the teaching at this location of Sutcliffe only describes how the system of Sutcliffe stores certain personal profile and other data regarding a user on a server in the form of personal page values table 134. The personal profile and other user data do not in any way teach or suggest a program object as recited in claim 1. As such, the cited portion of Sutcliffe in no way teaches or suggests the program object recited in claim 1.

With regard to program objects and resources recited in claim 1, the Examiner asserts that an HTML web page sent from a server to a remote user as taught by Sutcliffe teaches these limitations. More specifically, the Examiner asserts that program objects are taught by Sutcliffe at col. 9, lines 26-27 and col. 10, lines 63-64. (p. 4 of the Final Office Action) However, these portions of Sutcliffe merely briefly mention size limits placed on uploaded images and obtaining permission to view a personal page, respectively. As such the Examiner has failed to show where Sutcliffe teaches or suggests the program objects recited in claim 1. Sutcliffe fails to teach or suggest program objects as recited in claim 1.

Moreover, claim 1 recites an Internet access client. The Examiner asserts that the Internet access client uses HTML and HTTP for the sending of information, as such, a web browser as shown in Sutcliffe teaches or suggests the Internet access client recited in claim 1. In no place does claim 1 mention the use of an Internet web browser or other HTML or HTTP compliant program. The discussion above already addressed the distinction between in Internet access client and a web browser.

The Examiner further asserts that "assign[ing] a first program component to a first slot associated with a template for an Internet access client user interface" is taught by Sutcliffe. However, the portions of Sutcliffe cited by the Examiner in no way teach or suggest this limitation. In particular, there is no mention of slots and there is no teaching at all similar to the concept of slots in the cited portions of Sutcliffe. Col. 3, lines 1-5 briefly mentions templates. Col. 8, lines 34-46 teach a personal page menu that allows a user to select to edit or create personal page, and allow the user to select a template for a personal web page. As such, these portions of Sutcliffe in no way teach or suggest the limitations for which the Examiner has offered them. It appears as if the Examiner did a one for one word match of the word "template" without attempting to determine whether the term "template" as used in Sutcliffe has any functional correlation to the way it is used in the claims. As such, the Examiner has failed to show that and Sutcliffe fails to teach or suggest the limitation "assign[ing] a first program component to a first slot associated with a template for an Internet access client user interface" as recited in claim 1.

In the Final Office Action, the Examiner admits that Sutcliffe fails to teach the rules recited in claim 1. However, the Examiner states that rules related to program objects are taught by elements 101 and 110 of Fig. 6 and at col. 9, lines 34-36 of Brown. Review of Brown shows that elements 101 and 110 of Fig. 6 are rules and a rule editor, respectively. (Brown, col. 9, lines 6-24). The rules described in Brown relate to targeting data storage in the context of a server and the rules in Brown are used exclusively on the server. That is, the rules are not downloaded or otherwise sent to a client, but are used to manage queues and other information on a server. (Brown, col. 2, lines 14-27; col. 9, lines 6-24). Claim 1 recites sending rules to the Internet access client to associate program objects with program resources to form a program component.

Again, it appears as if the Examiner did a one for one word match of the word "rule" without attempting to determine whether the term "rule" as used in Brown has any functional correlation to the way it is used in the claims. As such, the rules in Brown, which are used on the server and are not sent to the client, in no way teach or suggest the rules recited in claim 1.

In addition, at col. 9, lines 34-36, Brown teaches profile editor software in a queue builder which human targeting analysts also known as rule developers may use to create definitions for groups of subscribers, content segments and content locations. The human targeting analysts may build database selection criteria using the profile editor. It is unclear how this is relevant to the limitations recited in claim 1. Claim 1 does not recite human intervention in the use of rules as is required in the portion of Brown cited by the Examiner. As such, the rules in Brown in no way teach or suggest the rules and related functionality recited in claim 1.

The Examiner also mentions Table 7 of Brown regarding using rule identifiers to uniquely identify rules. The discussion of the rule identifier and the other information in Table 7 of Brown in no way teaches or recites any of the features recited in claim 1. The rule identifier described regarding Table 7 of Brown involves the rule editor 110 used on a server computer and involved with maintaining information on a server. The rules described in Brown are not sent to a local device as recited in claim 1 and do not achieve the same end results as the rules recited in claim 1. As such, Brown fails to teach or suggest the rules and related rule features recited in claim 1.

Further, in view of the discussion in the prior paragraph, Brown fails to teach or suggest "sending a first rule to the local device to associate the first program object with the first program resource to form a first program component", and fails to teach or suggest "sending a second rule to the local device to assign the first program component to a first slot associated with a template for an Internet access client user interface" as recited in claim 1.

In addition, the Examiner asserts that, based on the Abstract, Fig. 1 and Fig. 2 of Sutcliffe, those skilled in the art would have been motivated to incorporate the rules of Brown with the teachings of Sutcliffe. However, there is no motivation to combine the teaching of the

rules of Brown with Sutcliffe to arrive at the invention recited in claim 1. Rules used in managing queues on a server as recited in Brown fail to teach or suggest the rules recited in claim 1. The rules recited in claim 1 are sent to an Internet access client at a local device to associate program objects with program resources to form a program component, and are sent to assign a program component to a slot associated with a template for an Internet access client user interface. Even if *in arguendo* Brown and Sutcliffe were combined, the teachings of Brown do not teach the rule association and assignment and their effects as discussed hereinabove and set forth in claim 1. In this way, the teachings of Brown fail to cure the deficiencies of Sutcliffe.

Overall, and generally, claim 1 includes the limitation of sending rules to the Internet access client to associate program objects with program resources to form a program component of an Internet access client. The cited art neither separately or in combination teach or suggest this multifaceted limitation. As such, claim 1 is patentable over the cited art.

To the extent the limitations recited in claim 1 are included in the other independent claims, namely claims 11, 21, 31 and 41, the arguments in the preceding paragraphs are applicable to these claims as well. The remainder of the claims depend on the independent claims, and, are therefore, patentable for the reasons set forth above.

Therefore, all of the limitations recited in the independent claims are neither taught nor suggested by Brown, by Sutcliffe, and by the combination of Brown and Sutcliffe. Thus, claims 1, 11, 21, 31 and 41, and all claims depending thereon, are patentable over the cited art.

IX. CONCLUSION AND RELIEF

In view of the foregoing, it is believed that all claims patentably define the subject invention over the prior art of record and are in condition for allowance. We request that the Board overturn the rejection of all claims and hold that all of the claims of the above referenced application are allowable.

Respectfully submitted,

Date: October 4, 2003



Mark A. Goldstein, Reg. No. 50,759

SoCal IP Law Group
310 N. Westlake Blvd., Suite 120
Westlake Village, CA 91362
Telephone: 805/230-1350, ext. 24
Facsimile: 805/230-1355
email: mgoldstein@socalip.com

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APPENDIX

The claims involved in this Appeal are as follows:

1. A method of creating a customized Internet access client user interface comprising:
 - selecting a first program object from a first set of available program objects based in part upon profile data associated with a local device;
 - selecting a first program resource from a first set of available program resources based in part upon the profile data;
 - sending the first program object to an Internet access client at the local device;
 - sending the first program resource to the Internet access client at the local device;
 - sending a first rule to the Internet access client at the local device to associate the first program object with the first program resource to form a first program component; and
 - sending a second rule to the Internet access client at the local device to assign the first program component to a first slot associated with a template for an Internet access client user interface.
2. The method of claim 1, further comprising sending a third rule to the Internet access client at the local device defining the template and defining slots associated with the template for receiving program components, said slots comprising the first slot and a second slot.
3. The method of claim 2, further comprising:
 - selecting a second program object from a second set of available program objects based in part upon the profile data;

selecting a second program resource from a second set of available program resources based in part upon the profile data;

sending the second program object to the Internet access client at the local device;

sending the second program resource to the Internet access client at the local device;

sending a fourth rule to the Internet access client at the local device to associate the second program object with the second program resource to form a second program component;

and

sending a fifth rule to the Internet access client at the local device to assign the second program component to the second slot.

4. The method of claim 2, wherein sending the first and second rules to the Internet access client at the local device is performed during a first session, and sending the third rule to the Internet access client at the local device is performed during a second session, the second session occurring in time before the first session.

5. The method of claim 4, wherein the profile data is received from the Internet access client at the local device during the second session.

6. The method of claim 1, further comprising:

selecting a second program object from a second set of available program objects based in part upon the profile data;

selecting a second program resource from a second set of available program resources based in part upon the profile data;

sending the second program object to the Internet access client at the local device;

sending the second program resource to the Internet access client at the local device;
 sending a third rule to the Internet access client at the local device to associate the second program object with the second program resource to form a second program component; and
 sending a fourth rule to the Internet access client at the local device to assign the second program component to a second slot associated with the template.

7. The method of claim 1, wherein the first and second rules are sent as a single rule.
8. The method of claim 1, wherein the profile data is received from the Internet access client at the local device during a session established with the local device.
9. The method of claim 1, wherein the first program resource is an executable computer program programmed to cycle through available customized user interfaces.
10. The method of claim 1, wherein the profile data comprises statistics regarding use of a client application associated with the local device.
11. A method of creating a customized Internet access client user interface in which an Internet access client performs actions comprising:
 - sending profile data to a server;
 - receiving a first program object from the server, said first program object having been selected from a first set of available program objects based in part upon the profile data;
 - receiving a first program resource from the server, said first program resource having been selected from a first set of available program resources based in part upon the profile data;

receiving a first rule from the server to associate the first program object with the first program resource to form a first program component;

receiving a second rule from the server to assign the first program component to a first slot associated with a template for an Internet access client user interface of the Internet access client; and

implementing the first and second rules by associating the first program object with the first program resource to form the first program component, assigning the first program component to the first slot, displaying the template on a display associated with a local device, and displaying the first program object on the display at a location corresponding to the first slot.

12. The method of claim 11, further comprising receiving a third rule from the server defining the template and defining slots associated with the template for receiving program components, said slots comprising the first slot and a second slot.

13. The method of claim 12, further comprising:

receiving a second program object from the server, said second program object having been selected from a second set of available program objects based in part upon the profile data;

receiving a second program resource from the server, said second program resource having been selected from a second set of available program resources based in part upon the profile data;

receiving a fourth rule from the server to associate the second program object with the second program resource to form a second program component;

receiving a fifth rule from the server to assign the second program component to the second slot; and

implementing the third, fourth, and fifth rules by associating the second program object with the second program resource to form the second program component, assigning the second program component to the second slot, displaying the template on a display associated with the local device, and displaying the second program object on the display at a location corresponding to the second slot.

14. The method of claim 12, wherein receiving the first and second rules is performed during a first session between the Internet access client and the server, and receiving the third rule is performed during a second session between the Internet access client and the server, the second session occurring in time before the first session.

15. The method of claim 14, wherein the Internet access client sends the profile data to the server during the second session.

16. The method of claim 11, further comprising:

receiving a second program object from the server, said second program object having been selected from a second set of available program objects based in part upon the profile data;

receiving a second program resource from the server, said second program resource having been selected from a second set of available program resources based in part upon the profile data;

receiving a third rule from the server to associate the second program object with the second program resource to form a second program component;

receiving a fourth rule from the server to assign the second program component to a second slot associated with the template; and

implementing the third and fourth rules by associating the second program object with the second program resource to form the second program component, assigning the second program component to the second slot, and displaying the second program object on the display at a location corresponding to the second slot.

17. The method of claim 11, wherein the first and second rules are received as a single rule.

18. The method of claim 11, wherein the Internet access client sends the profile data to the server during a session established with the server.

19. The method of claim 11, wherein the first program resource is an executable computer program programmed to cycle through available customized user interfaces.

20. The method of claim 11, wherein the profile data comprises statistics regarding use of a client application.

21. A system for creating a customized Internet access client user interface, the system comprising:

an Internet server; and

computer software programmed to:

a) select a first program object from a first set of available program objects based in part upon profile data associated with a local device;

b) select a first program resource from a first set of available program resources based in part upon the profile data;

c) send the first program object to an Internet access client at the local device;

- d) send the first program resource to the Internet access client at the local device;
- e) send a first rule to the Internet access client at the local device to associate the first program object with the first program resource to form a first program component; and
- f) send a second rule to the Internet access client at the local device to assign the first program component to a first slot associated with a template for an Internet access client user interface.

22. The system of claim 21, wherein the software is further programmed to send a third rule to the Internet access client at the local device defining the template and defining slots associated with the template for receiving program components, said slots comprising the first slot and a second slot.

23. The system of claim 22, wherein the software is further programmed to:

- select a second program object from a second set of available program objects based in part upon the profile data;

- select a second program resource from a second set of available program resources based in part upon the profile data;

- send the second program object to the Internet access client at the local device;

- send the second program resource to the Internet access client at the local device;

- send a fourth rule to the Internet access client at the local device to associate the second program object with the second program resource to form a second program component; and

- send a fifth rule to the Internet access client at the local device to assign the second program component to the second slot.

24. The system of claim 22, wherein the software is further programmed to send the first and second rules to the Internet access client at the local device during a first session, and to send the third rule to the Internet access client at the local device during a second session, the second session occurring in time before the first session.

25. The system of claim 24, wherein the software is further programmed to receive the profile data from the Internet access client at the local device during the second session.

26. The system of claim 21, wherein the software is further programmed to:

- select a second program object from a second set of available program objects based in part upon the profile data;

- select a second program resource from a second set of available program resources based in part upon the profile data;

- send the second program object to the Internet access client at the local device;

- send the second program resource to the Internet access client at the local device;

- send a third rule to the Internet access client at the local device to associate the second program object with the second program resource to form a second program component; and

- send a fourth rule to the Internet access client at the local device to assign the second program component to a second slot associated with the template.

27. The system of claim 21, wherein the software is further programmed to send the first and second rules as a single rule.

28. The system of claim 21, wherein the software is further programmed to receive the profile data from the Internet access client at the local device during a session established with the Internet access client at the local device.

29. The system of claim 21, wherein the first program resource is an executable computer program programmed to cycle through available customized user interfaces.

30. The system of claim 21, wherein the profile data comprises statistics regarding use of a client application associated with the local device.

31. A system for displaying a customized Internet access client user interface, the system comprising:

a local device having a display; and

computer software programmed to implement an Internet access client, the computer software to:

- a) send profile data to a server;
- b) receive a first program object from the server, said first program object having been selected from a first set of available program objects based in part upon the profile data;
- c) receive a first program resource from the server, said first program resource having been selected from a first set of available program resources based in part upon the profile data;
- d) receive a first rule from the server to associate the first program object with the first program resource to form a first program component;
- e) receive a second rule from the server to assign the first program component to a first slot associated with a template for an Internet access client user interface; and
- f) implement the first and second rules by associating the first program object with the first program resource to form the first program component, assigning the first program component to the first slot, displaying the template on the display, and displaying the first program object on the display at a location corresponding to the first slot.

32. The system of claim 31, wherein the software is further programmed to receive a third rule from the server defining the template and defining slots associated with the template for receiving program components, said slots comprising the first slot and a second slot.

33. The system of claim 32, wherein the software is further programmed to:

receive a second program object from the server, said second program object having been selected from a second set of available program objects based in part upon the profile data;

receive a second program resource from the server, said second program resource having been selected from a second set of available program resources based in part upon the profile data;

receive a fourth rule from the server to associate the second program object with the second program resource to form a second program component;

receive a fifth rule from the server to assign the second program component to the second slot; and

implement the third, fourth, and fifth rules by associating the second program object with the second program resource to form the second program component, assigning the second program component to the second slot, displaying the template on the display, and displaying the second program object on the display at a location corresponding to the second slot.

34. The system of claim 32, wherein the software is further programmed to receive the first and second rules during a first session with the server, and to receive the third rule during a second session with the server, wherein the second session occurs in time before the first session.

35. The system of claim 34, wherein the software is further programmed to send the profile data to the server during the second session.

36. The system of claim 31, wherein the software is further programmed to:

receive a second program object from the server, said second program object having been selected from a second set of available program objects based in part upon the profile data;

receive a second program resource from the server, said second program resource having been selected from a second set of available program resources based in part upon the profile data;

receive a third rule from the server to associate the second program object with the second program resource to form a second program component;

receive a fourth rule from the server to assign the second program component to a second slot associated with the template; and

implement the third and fourth rules by associating the second program object with the second program resource to form the second program component, assigning the second program component to the second slot, and displaying the second program object on the display at a location corresponding to the second slot.

37. The system of claim 31, wherein the software is further programmed to receive the first and second rules as a single rule.

38. The system of claim 31, wherein the software is further programmed to send the profile data to the server during a session established with the server.

39. The system of claim 31, wherein the first program resource is an executable computer program programmed to cycle through available customized user interfaces.

40. The system of claim 31, wherein the profile data comprises statistics regarding use of a client application associated with the local device.

41. A method of creating a customized Internet access client user interface comprising:

selecting a first program object from a first set of available program objects based in part upon a brand name indicator associated with a local device;

selecting a first program resource from a first set of available program resources based in part upon the brand name indicator;

sending the first program object to an Internet access client at the local device;

sending the first program resource to the Internet access client at the local device;

sending a first rule to the Internet access client at the local device to associate the first program object with the first program resource to form a first program component;

sending a second rule to the Internet access client at the local device to assign the first program component to a first slot associated with a template for an Internet access client user interface; and

sending a third rule to the Internet access client at the local device defining the template and defining slots associated with the template for receiving program components, said slots comprising the first slot and a second slot.

42. The method of claim 41, wherein the steps of selecting the first program object and the first program resource are further based in part upon profile data associated with the local device.